UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,556	01/25/2002	Michael W. Wallace	3301-007	4673

20575 7590 11/04/2005

MARGER JOHNSON & MCCOLLOM, P.C.
210 SW MORRISON STREET, SUITE 400
PORTLAND, OR 97204

EXAMINER	
ABEL JALIL, NEVEEN	
ART UNIT	**PAPER NUMBER**
2165	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/057,556	WALLACE, MICHAEL W.	
	Examiner	Art Unit	
	Neveen Abel-Jalil	2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *August 4, 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Remarks

1. The Request for Reconsideration filed on August 4, 2005 has been received and entered. Claims 1-19 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claim 1-3, and 5-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over May et al. (U.S. Patent No. 5,544,354) in view of Li et al. (U.S. Patent No. 5,608,899).

As to claim 1, May et al. discloses a method for selecting among multiply-categorized items, comprising:

storing within a memory a list of a plurality of media (See May et al. abstract, wherein "memory" reads on "database") content items and associated top-level categories, including at least one having associated therewith two or more top-level categories (See May et al. column 19, lines 7-22, and see May et al. column 18, lines 18-39, and see May et al. figure 1G, shows all movies titles listed alphabetically under the selected category, also see May et al. abstract);

allowing selection under control of the processor (See May et al. column 32, lines 35-56) by a user of two or more top-level categories from the list of categories stored in memory (See May et al. column 5, lines 26-57, wherein "selecting at least two" reads on "filters the title of the cells that are available at");

presenting to the user on a display the sub-list of selected media content items (See May et al. column 32, lines 35-56).

May et al. does not teach selecting for presentation to the user under control of the processor in a single compile a sub-list of only those media content items associated with all of the two or more top-level categories selected by the user.

Li et al. teaches selecting for presentation to the user under control of the processor in a single compile a sub-list of only those media content items associated with all of the two or more top-level categories selected by the user (See Li et al. column 3, lines 26-57).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified May et al. to include selecting for presentation to the user under control of the processor in a single compile a sub-list of only those media content items associated with all of the two or more top-level categories selected by the user.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified May et al. by the teaching of Li et al. to include selecting for presentation to the user under control of the processor in a single compile a sub-list of only those media content items associated with all of the two or more top-level categories selected by the user because it allows for efficient retrieval of search results and more accurate results.

As to claim 2, May et al. as modified does not teach wherein the top-level categories include "action" (See May et al. figure 1, 2.2.6).

As to claim 3, May et al. as modified does not teach wherein the top-level categories includes "adventure" (See May et al. figure 1, 2.2.6).

As to claim 5, May et al. as modified discloses wherein the top-level categories includes "comedy" (See May et al. figure 1, 2.2.3).

As to claim 6, May et al. as modified discloses wherein the top-level categories includes "drama" (See May et al. figure 1, 2.2.9).

As to claim 7, May et al. as modified discloses wherein the top-level categories includes "foreign" (See May et al. figure 1D, 2.2.11).

As to claim 8, May et al. as modified discloses wherein the top-level categories includes "musical" (See May et al. figure 1, 2.2.10).

As to claim 9, May et al. as modified discloses wherein the top-level categories includes "sci-fi" (See May et al. figure 1, 2.2.8).

As to claim 10, May et al. discloses wherein the top-level categories includes "romance" (See May et al. figure 1, 2.2.12).

As to claim 11, May et al. as modified discloses comprising the steps of:

presenting on the display a submenu list associated (See May et al. column 31, lines 5-55) with each of the plurality of media content one or more items (See May et al. column 18, lines 18-39, also see May et al. column 5, lines 26-47); and

allowing selection by a user of one or more items from the submenu list (See May et al. column 7, lines 26-66); and

selecting for presentation to the user a list of only those media content items associated with all of the two or more top-level categories selected by the user that are also associated with the items selected from the submenu list (See May et al. column 7, lines 26-66, and see May et al. column 20, lines 11-45, wherein "submenu" reads on "level within a database", also see May et al. column 2, lines 20-51, prior art).

As to claim 12, May et al. as modified discloses wherein the step of allowing selection from the submenu list occurs after the step of allowing selection of the top-level categories (See May et al. column 3, lines 42-53, prior art, also see May et al. column 15, lines 11-33).

As to claim 13, May et al. as modified discloses wherein the step of allowing selection of items from the submenu list includes displaying the items to the user, wherein the items

displayed is dependent upon the top-level categories selected by the user (See May et al. column 5, lines 26-57, also see May et al. column 17, lines 5-38, wherein "top-level" reads on "movies").

As to claim 14, May et al. discloses a method for selecting for display content of a display screen, the method comprising the steps of:

displaying a list of top-level categories on a display screen (See May et al. figure 1D);

selecting at least two of the top-level categories from the list (See May et al. column 5, lines 26-57, wherein "selecting at least two" reads on "filters the title of the cells that are available at"); and

presenting on the display screen content responsive to said selecting step (See May et al. column 5, lines 26-57).

May et al. does not teach performing a single compile on the selected top-level categories.

Li et al. teaches performing a single compile on the selected top-level categories (See Li et al. column 3, lines 26-57, wherein "a single compile" reads on "query").

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified May et al. to include performing a single compile on the selected top-level categories.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified May et al. by the teaching of Li et al. to include performing a single compile on the selected top-level categories because it allows for efficient retrieval of search results and more accurate results.

As to claim 15, May et al. as modified discloses further comprising the steps of:

selecting at least one item from a submenu list (See May et al. figure 1E, 107, "Forbidden Planet" is selected as the movie of choice from the listed cells in the submenu list under top-level category "adventure"); and

presenting on the display screen data associated with said selected item and said selected top-level categories (See May et al. column 5, lines 26-57, wherein "presenting on the display screen" reads on "preview").

As to claim 16, May et al. as modified discloses wherein the step of presenting on the display screen content responsive to said selecting step includes the step of displaying of list of content associated with all of said top-level categories selected from the list (See May et al. column 19, lines 7-22, and see May et al. column 18, lines 18-39, and see May et al. figure 1G, shows all movies titles listed alphabetically under the selected category).

As to claim 17, May et al. as modified discloses wherein the step of presenting on the display screen content responsive to said selecting step includes the step of displaying of list of content associated with exactly all of said top-level categories selected from the list (See May et al. column 5, lines 26-57, also see May et al. column 17, lines 5-38, wherein "top-level" reads on "movies").

As to claim 18, May et al. as modified discloses wherein the step of presenting on the display screen content responsive to said selecting step includes the step of displaying a list of content associated with any one or more top-level categories selected from the list (See May et al. figure 11, 1105, shows "top-level categories selected from a list" represented by "set up matrix cell list", also see May et al. figure 1E, 107, "Forbidden Planet" is selected as the movie of choice from the listed cells in the top-level category "adventure").

As to claim 19, May et al. as modified discloses wherein the list of top level categories includes at least four of the following: action, adventure, adult, comedy, drama, foreign, musical, romance and sci-fi (See May et al. figure 1D).

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over May et al. (U.S. Patent No. 5,544,354) in view of Li et al. (U.S. Patent No. 5,608,899) and further in view of Swix et al. (U.S. Patent No. 6,718,551 B1).

As to claim 4, May et al. as modified still does not teach wherein the top-level categories includes "adult".

Swix et al. teaches wherein the top-level categories includes "adult" (See Swix et al. column 10, lines 40-46, also see Swix et al. figure 3, 302).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified May et al. as modified to include wherein the top-level categories includes "adult".

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified May et al. as modified by the teaching of Swix et al. to include wherein the top-level categories includes "adult" because it allows for targeted selection and user customization and introducing viewer discretion.

Response to Arguments

5. Applicant's arguments filed on August 4, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner is establishing motivation in obviousness in the knowledge generally avaible to one of ordinary skill in the art, to modify the invention of May et al. with the teachings of Li et al., as explained in the Final office action. Both references graphically display user's query selections making it efficient to browse the stored database records and therefore obvious to be combined (See May et al. column 17, lines 5-10 and Li et al. column 1, lines 33-36).

In response to applicant's argument that "May fails to teach the selection of two or more top level categories from a list of such categories and then presenting a sub-list resulting a compile of the category selections" is acknowledged but not deemed to be persuasive.

The Examiner maintains that May et al. teaches the argued limitaion. The "selection" step is of two categories not necessarily at the same time (i.e. not simultaneously). Clicking on the presented two or more top-level categories listed Figure 1E, and column 17, lines 5-11 is broadly interpreted to read on "selecting".

The "presenting" step is of a single compile, which is well known in the art as basically a merge or aggregate operator under SQL protocol, which is widely used in the database art. Moreover, Li et al. teaches the step of a single compile in column 4, lines 45-51, and see abstract wherein a query is graphically presented in at least two dimensions broadly interpreted to read on a merge or aggregation of record.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a search filter that takes place among two or more simultaneously selected top level categories) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., two top-level categories can be selected from within a list at nay one time) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a selection process using a logic AND statement) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that "the combination of May et al. with Li et al. fails to teach a selection process using a logic AND statement" is acknowledged but not deemed to be persuasive.

The Examiner maintains that the combination of May et al. with Li et al. teaches the argued limitaion specifically in May et al. Figures 3B & 3C.

In response to applicant's argument that "Li et al. teach composing the query to display a list of those items in which any one of the selected elements is present which is contrary to the claimed invention" is acknowledged but not deemed to be persuasive.

The Examiner respectfully disagrees and maintains that Li et al. by producing query results under "ALL" selections as described in the follow chart in Figure 4C steps 760 and 770 is accumulating results under AND statement logic while maintaining the option of accumulating results under OR statement logic as disclosed in Li et al. Figure 4C step 750, clicking on zero or more check boxes thereby filtering and limiting the category selections to the user's preference.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Neveen Abel-Jalil
October 31, 2005

JEFFREY GAFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100